FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 352 / 2002
(Shrirang Ramratan Chandak Vs Kamlabai Mohanlal Bagdi & ors.)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. J.J. Chandurkar, Adv. for the appellant.
Mr. D.C. Daga, Adv. for R-1.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 29th August, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant no. 6. It was the case of the plaintiff that the plaintiff had invested an amount of Rs. 25,000/- with the defendant no.1, a partnership firm of which the defendant nos. 2 to 5 were the partners. The defendant no.2, on behalf of the partnership firm, had accepted the amount of Rs. 25,000/- from the plaintiff and had executed a receipt on 16/10/1986 acknowledging the said deposit. The defendant no. 2 had also issued a post-dated cheque on 9/8/1987 and assured the payment thereof. It was the case of the plaintiff that the defendant no.6 indemnified the cheque by making an endorsement on the receipt dated 16/10/1986. Since the cheque was bounced for insufficiency of funds, and the defendant nos. 1 to 6 failed to repay the amount, the plaintiff filed a

suit for recovery of the amount.

The trial Court held that the plaintiff had proved that an amount of Rs. 25,000/- was deposited with the defendant nos. 1 to 5. The Court further held that the plaintiff was entitled to receive an amount of Rs. 25,000/- from the defendant nos. 1 to 5 along with future interest thereon. The Court, however, held that the defendant no.6 was not jointly and severally liable to pay the decretal amount. The plaintiff, however, was not satisfied with the decree passed by the trial Court as, according to the plaintiff, the defendant no.6 was also jointly and severally liable to pay the amount deposited with the defendant nos. 1 to 5. The first appellate Court, by the judgment dated 4th May, 2002, allowed the appeal filed by the plaintiff and modified the judgment passed by the trial Court. The appellate Court held that the defendant nos. 1, 2, 5 and 6 were jointly and severally liable to pay an amount of Rs. 25,000/- to the plaintiff along with future interest @ 18% per annum from the date of filing of the suit till its realisation. The judgment passed by the appellate Court is challenged in this second appeal.

I have perused the document dated 16/12/1986. It is apparent from the perusal of the document that the plaintiff had deposited an amount of Rs. 25,000/- with the defendant no.1-Firm

and the defendant no.1-Firm had also handed a cheque dated 9/8/1987 to the plaintiff. The defendant no.6 had endorsed on the deposit note that in case the plaintiff did not receive the proceeds of the cheque, the defendant no.6 would be rendered liable for refund of the amount of deposit to the plaintiff. Though the defendant no.6 had not denied his signature below the writing on the left side of the document dated 16/12/1986, the defendant no.6 had, however, denied the writing on the document to the effect that the defendant no.6 would be liable to refund the amount to the plaintiff in case the cheque was not honoured. A perusal of the document further shows that the defendant no. 6 had signed across the revenue stamp. This would not have been so done if the defendant no.6 had only signed as an attesting witness to the document, as pleaded by him. Moreover, the defendant no.6 would also not have signed below the writing that the defendant no.1 had issued a cheque bearing No. 68710 dated 9/8/1987 in favour of the plaintiff. The document speaks for itself and it was clear from the document that the defendant no. 6 had agreed to refund the amount to the plaintiff in case the defendant nos. 1 to 5 failed to pay the same to the plaintiff or the cheque was dishonoured. Though, in the strict sense, the said contract could not be said to have been a contract

of indemnity or guarantee, there was definitely a promise by the defendant no.6 to refund the amount to the plaintiff in case the defendant nos. 1 to 5 failed to pay the same. The first appellate Court, therefore, rightly held that the defendant no.6 was also jointly and severally liable along with the other defendants, to repay the amount to the plaintiff.

The findings recorded by the first appellate Court are based on a proper appreciation of the material documents on the record so also the oral evidence tendered by the parties on record. Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

RMP